PART XXIX.—MISCELLANEOUS.

1. *Mahábaleshwar Forests.*—The forests surrounding Mahábaleshvar, known as "Panch Mile Rahn," should be under the control and management of the Conservator of Forests, N. D., and the Superintendent of Mahábaleshvar is, in forest matters, to be considered his Assistant. (G. R. No. 5630, dated 9th November 1871.)

2. *Dáng Forests.*—Either the Political Agent in Khándesh or Assistant Political Agent should positively visit the Dángs at least once a year, and the Forest Officer must arrange to meet him there. They will then arrange for preventing the destruction of timber on the one hand and putting down the extortions by forest peons on the other. (G. R. No. 4269, dated 28th July 1875.)

3. *Supply of Rules, &c., to the Government of India.*—Copies of rules and notifications, except those under Section 4 relating to the proposed constitution of areas as reserved forests, that may be published by Local Governments under the provisions of the Indian Forest Act, 1878, should be submitted to the Government of India for information and record (G. I., R. A. & C., No. 21-F., dated 15th April 1878, and G. I., R. & A., No. 17-F, dated 18th June 1889; *vide* G. Rs. Nos. 2218, dated 30th April 1878, 6092, dated 20th August 1889, and 2628, dated 11th May 1881.)

4. Three copies of all rules that may be issued under the provisions of the Forest Act should be regularly and promptly supplied to the Government of India. (G. I., R. & A., No. 29-F., dated 13th September 1889.)

5. *Forest Produce.*—What constitutes "forest produce" is clearly laid down in the definition of that term as given in paragraph 2 of the Indian Forest Act. Loose stones and the ruins of old buildings, whether composed of cutstone or of bricks, clearly do not come within the category of articles included in the definition of forest produce. (G. Rs. Nos. 1802, dated 28th March 1881, and 3428, dated 28th April 1884.)

6. The District Officers may safely be trusted to exercise with discretion the powers with which they are invested by the Survey Rules. In reserved forests, the quarrying of stone, the selling of trees, and removal of forest produce are prohibited under Section 25 of the Act, except with permission in writing of the Forest Officer or under a rule made by the Local Government. The Collectors have not claimed authority to sanction any of these acts in reserved forests without the concurrence of the Forest Department. Village forests are reserved forests in which some of the rights of Government have been transferred to the villagers, and the above remarks apply to them also. In protected forests there is no general and absolute prohibition of quarrying, felling, or the removal of forest pro-

duce, and therefore the less necessity for any stringent rules. Government, while upholding the principle that the Forest Officers should be consulted as to the disposal of public property which is under their care, considers that the details may very well be settled between the Collector and the District Forest Officer, and by a general understanding as to what should be allowed or forbidden rather than by correspondence on every particular case. When any important difference of opinion arises, the question may be referred to higher authority. (G. R. No. 2309, dated 23rd April 1881.)

7. Applications for permission to obtain stone and murum from the forest area should, when preferred, be speedily disposed of by the Divisional Forest Officer and all reasonable facilities for procuring what is required should be allowed when the quarrying of stone or the removal of murum is not likely to be injurious to the forests. (G. R. No. 1203, dated 14th February 1883.)

8. The fees to be charged for the removal of earth, stone, sand, kankar, murum, &c., from reserved forests should be settled by the Conservators of Forests and Forest Officers in communication with the Commissioners of Divisions, who would represent the interests of the public. When the levy of a fee per cart-load would act prohibitively, a fee per 100 cubic feet may be substituted. (G. R. No. 1872, dated 29th February 1884.)

9. The levy of fees for the removal by villagers for domestic or agricultural purposes of loose stones from forest lands should be discontinued in the Poona Collectorate. Such stones may be taken by the villagers free of charge for the purposes mentioned, but should only be removed after the permission of the local Forest Officers has been obtained. (G. R. No. 7737, dated 31st October 1890.)

10. Government leave it to the Conservator of Forests, S. D., to determine in each year whether the myrobolans growing in the Government forests in the Belgaum District should be sold at the ghát depôts or conveyed departmentally to the coast for sale there. If reasonable prices are not offered at the ghát depôts, the myrobolans may be sent to the coast. The probable cost of carriage should be entered in the budget on the understanding that the amount will not be expended if the myrobolans can be sold with advantage at the ghát depôts. (G. R. No. 4164, dated 28th June 1882.)

11. In cases in which inám and malki lands bearing much hirda adjoin and are mixed up with the Government hirda tracts along the Belgaum Ghâts, the Conservator of Forests, S. C., is authorized to dispose of applications from inámdárs and malkivalas for the collection of their hirda (myrobolans) by the Forest Department at the same time as the Government hirdas are collected, on the condition that they were given a share of the realiza-

tions from the sale of hirdas in proportion to the area their hirda-bearing land bears to the Government forests from which hirdas are collected. Applications are to be made annually by the men individually and it should be optional to either side—the applicants and the Forest Department—to accept or refuse renewal. (G. R. No. 567, dated 22nd January 1887.)

12. Hirdas collected at depôts are not immoveable property, and the registering of agreements concerning the sale of hirdas to be collected at depôts is not compulsory. (L. R. No. 593, dated 26th May 1893; *vide* G. R. No. 4382, dated 19th June 1893.)

13. The principle which should govern the action of the officers concerned in the matter of regulating the collection of articles of minor forest produce is that—

I.—Exploitation should be limited—

(1) to articles for which a trade demand exists or for which there is a reasonable probability that such a demand may in time be created, and, in respect of such articles, to localities in which they are produced in sufficient abundance, and which are sufficiently accessible to be worth working;

(2) to articles, such as catechu, the collection or manufacture of which it is necessary in the interests of forest conservancy to keep under effective control.

II.—Except in so far as they may be reserved for exploitation in each district from year to year in pursuance of that principle, the collection and sale of articles of minor forest produce, in open forests, should be left free and unrestricted.

The application of this principle will naturally vary in different districts and in different seasons, and His Excellency the Governor in Council considers that it should be left to the Revenue and Forest authorities of each district to consider and decide in concert each year, before the collecting season begins,

(*a*) what articles in what localities it will be proper to exploit, having regard to local conditions and past results;

(*b*) what arrangements should be made or what conditions imposed, either generally or specially, in order to prevent hardship and secure the greatest benefit to the people employed in collecting.

It should be clearly understood that Government are not anxious to make a revenue from minor produce and that the application of the principle should not be allowed to operate in restriction of any rights or privileges of collection for private use or sale that may have been, or may hereafter be, recognized under due authority.

Any difference of opinion among the district officers should be referred for settlement to the Commissioner through the Conservator. The decision of the Commissioner should be regarded as final.

The arrangements agreed upon, the results of the year, and the progress made in the direction desired, that of creating or extending industries which improve the condition of the forest tribes, should be noticed fully in the District Revenue and Forest Administration Reports for the year, and summarized and compared by the controlling officers for the information and orders of Government.

(G. R. No. 9846, dated 15th December 1892.)

14. *Area of Forest Districts.*—Frequent changes of the area of forest districts are undesirable. (G. R. No. 6489, dated 19th September 1882.)

15. *Karvi.*—Karvi growing in reserved forests should not be allowed to be cut until it has seeded; otherwise this useful plant may become entirely extinct within a not far distant period. (G. R. No. 8633, dated 24th November 1883.)

16. *Mhowra.*—Mhowra tree should be constituted a reserved tree in every protected forest in the Presidency and on all waste lands. This should be attended to wherever it is expedient to check the improper use of mhowra flower. (G. Rs. Nos. 235, dated 10th January 1884, and 8977, dated 14th November 1884.)

17. Orders issued by the Conservator of Forests, N. C., cancelling the reservation of mhowra trees from coupes in the Thána Forests were approved by Government, and the Conservator of Forests, S. C., was directed to issue similar orders as regards those trees in the Kolába District. (G. R. No. 388, dated 13th January 1893.)

18. *Recovery of money due to Government.*—The words in Section 81 of the Forest Act, "all money payable to the Government under this Act or under any rule made under this Act," apply to monies such as duties on timber leviable under Section 39 or fines for cattle-trespass payable under Section 70 or fees for passes prescribed under Section 41, clause (*c*). There must be some express provision of the Act, or of a rule made under the Act, which can be pointed to as the authority under which money is declared to be payable, in order that it may fall within the above words of Section 81.

Certain monies not falling within the above category are also leviable under Section 81. They are:—

(1) Money payable to Government on account of the price of any forest produce; and

(2) Money payable to Government on account of expenses incurred in the execution of the Act in respect of such produce.

These are monies 'payable under the Act' in the same sense in which the Conservator of Forests, N.D., (in his letter No. 4288, dated 5th October 1883,) argued that damages due by a purchaser of the rights of grazing in a forest for breach of the terms on which the right had been allowed were so payable. If, therefore, it had been intended that all money which could in any sense be said to be payable under the Act should be recoverable as an arrear of land revenue, there would have been no reason for expressly specifying in the section the above two special instances.

The conclusion to be drawn from the language of the section is that it is meant to apply only to money which is, properly speaking, 'payable under the Act or under any rule made under the Act' as explained above in paragraph 1, and to money payable under the other circumstances expressly mentioned in it.

Damages to which the purchaser of the grazing of a reserved forest renders himself liable by infringing the conditions under which the grazing was sold to him are not really 'money payable under the Act.' They are payable, if at all, under the terms of the contract with the purchaser of the right of grazing. The proper course for the recovery of such damages, if the purchaser will not pay them voluntarily, is the institution of a suit against him in the Civil Court.

(L. R. No. 645, dated 22nd December 1883; *vide* G. R. No. 239, dated 10th January 1884.)

19. With reference to the marginally quoted remark of the Conservator of Forests, N. D., the following opinion (No. 124, dated 26th January 1884), which was concurred in by Government, was expressed by the Remembrancer of Legal Affairs :—

"5. The marginal note in the Forest Act against Section 81 reads thus: '*Recovery of money due to Government,*' Now in the case submitted, the grazing of a reserved forest was sold to a contractor who was bound under written agreement to pay the amount of any damages which might occur by proceedings or default on his part beyond the stipulations of his agreement. The contractor let in sheep into the reserved forest which he was not entitled to do, and the sheep devoured plants, which a committee, the contractor being a member thereof, valued at Rs. 26. I deferentially submit that this money comes in the words of Section 81 of the Forest Act within the description of '*on account of the price of any forest produce,*' and f the marginal note 'Recovery of money due to Government' is meant to express the intention of Section 81, then the money is, I still think, leviable under that section."

"The 'price' of a thing is the sum for which it is sold, not the value at which a thing may be assessed after it has been misappropriated. Marginal notes are merely a guide to the contents of the sections of an enactment; they are not a part of the law."

(G. R. No. 1422, dated 14th February 1884.)

20. A purchaser of Government timber at auction paid only a portion of the price. The Forest Department took possession of a portion of such timber and sold it by public auction in order to realize the balance of the price. The price fetched at this second sale not realizing all that was due, the Conservator applied to the Collector to realize the

outstanding under Section 81 of the Forest Act, VII of 1878.

The Collector declined on the ground that the balance due was not part of the price but a deficit on re sale for which no provision existed such as in analogous cases under the Land Revenue Code is made by Sections 175, 176 and 177.

The question was raised whether the money could be recovered under Section 81 of the Forest Act as if it had been an arrear of land revenue.

Section 81 provides that money payable on account of forest produce may be recovered as if it were an arrear of land revenue.

Money payable on account of the price does not lose its character by the mere fact that part recovery has been effected under another procedure. If a portion of the price had been recovered as it fell due by civil suit or by auction-sale under the Land Revenue Code, or in any other way, that would not affect the power conferred by Section 81 in respect of the balance.

Section 82 of the Forest Act does not refer to re-sale. It is evidently framed so as to include all cases where money is due under the Act or under the rules, and would cover such cases as are provided for by rules under Section 51 (*c*), and all cases in which money is payable under the Act as duty, fee, royalty, &c.

This accounts for the omission in Section 82 of all reference to deficit and re-sale.

Indeed Section 82 does not treat the sales made by a Forest Officer under its provisions as a re-sale at all. In cases where the Legislature provides for re-sale (*vide* Civil Procedure Code, Section 308, and Land Revenue Code, Section 175) the defaulting purchaser is declared to forfeit all claims to the property or to any part of the sum for which it may be sold.

Section 82 does not do this and does not extinguish the property in the produce sold, but only declares it subject to a charge.

Section 82, therefore, does not operate as a rescission of the sale, but only as one of the means by which money payable for or in respect of produce may be recovered, and balance unrecovered is, therefore, still due on account of price, and does not become due as a deficit on re-sale.

Therefore, such balance of the price is recoverable under Section 81 as if it were an arrear of land revenue, notwithstanding any other steps short of a rescission of the sale that may have been previously taken for recovery.

(L. R. No. 1062, dated 29th September 1888; *vide* G. R. No. 7373, dated 6th November 1888.)

21. The following opinion, No. 388, dated 14th March 1891, was recorded by the Remembrancer of Legal Affairs :—